

October 7, 2005

Ms. Ann Klee  
General Counsel  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

**RE: *Pakootas, et al. v. Teck Cominco Ltd.* Settlement Discussions**

Dear Ms. Klee:

This letter is to notify you that the State of Washington, the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians (the 3 Sovereigns) are interested in participating in the proposed sixty-day negotiations with Teck Cominco Metals, Ltd. (TCM) as proposed at the September 15, 2005 meeting in Washington D.C. Our interest, however, is dependant on the following understandings and ground rules.

At the outset, the 3 Sovereigns want to clarify that we are not comfortable using the draft May 2005 federal proposal distributed to the 3 Sovereigns and TCM on September 15 as an opening position for these negotiations. The 3 Sovereigns were not parties to the document and it ignores progress we made in our negotiations with TCM over the past four months. More importantly, it forecloses our ability to engage TCM in meaningful discussions regarding our respective written settlement positions. In short, although we did identify areas of agreement during our discussions on September 15, the current version of the federal draft does not accurately present our position. In order not to lose ground, it is our position that the 3 Sovereigns and the federal family (the 4 Sovereigns) ~~should open the 60-day negotiating period with TCM based upon the terms and conditions outlined in our July 29, 2005 letter to Doug Horswill (a copy of that letter is attached for your convenience).~~

As that letter indicates, the 3 Sovereigns believe that to adequately protect human health and the quality of the environment, any settlement with TCM must contain the following:

- Teck must enter into binding legal agreements, for both the Human Health RI/FS Track and Eco-Risk RI/FS-NRD Track.<sup>1</sup>
- Collectively, all work funded by TCM and performed by EPA to implement the Human Health RI/FS and all work funded by TCM and performed by an agreed-upon consultant to implement the Eco-Risk RI/FS-NRD Track (as well as all documents generated under each of the Two Tracks) must comply with the substantive requirements of CERCLA and be consistent with the NCP.

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<sup>1</sup>The form of Binding Legal Agreements will presumptively be a UAO (from the Human Health Track) and an AOC and/or CD for the Eco-Risk Track.

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- Teck will provide EPA with a lump-sum cash payment in the amount determined by the 4 Sovereigns to fund the Human Health RI/FS Track work to be performed by EPA and its contractors.<sup>2</sup>
- Teck will fund the Eco-Risk RI/FS-NRD Track in a lump-sum cash amount determined by the 4 Sovereigns to implement a scope of work that is consistent with the substantive requirements of CERCLA and the NCP and meets the technical needs of the CERCLA NR Trustees. The work will be performed by mutually agreed-upon contractor(s).
- Teck, or the Teck entity entering into the binding legal agreements with the 4 Sovereigns, must be identified (TCM or TC American) and enforcement of the binding legal agreements must be available in U.S. District Court for the Eastern District of Washington. Teck (or the Teck entity) must agree not to raise jurisdictional defenses in an action to enforce either binding legal agreement in U.S. District Court.
- Teck must enter into a Tolling Agreement with the 3 Sovereigns that provides the statute of limitations for natural resource damage claims will be tolled until a mutually agreed-upon date.
- Teck must agree to reimburse the 3 Sovereigns for their past response and oversight costs incurred with regard to the Site and also agree to pay all present and future response and oversight costs incurred by the 3 Sovereigns.
- EPA's UAO and Judge MacDonald's District Court opinion remain in place until the cleanup and natural resource restoration is completed or until the parties otherwise agree. The parties to the Ninth Circuit litigation shall attempt to put the litigation on hold until the cleanup and natural resource restoration is completed or until the Parties otherwise agree.

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As noted above, the draft May 2005 federal proposal was prepared without any participation by the 3 Sovereigns and is not consistent with the above noted terms. The 3 Sovereigns respectfully request that the United States, consistent with its trust responsibility to the two participating Tribes, and as a matter of comity to the State, agree that the 3 Sovereigns and the federal family will use the 3 Sovereigns' July 29 letter as the starting point for further settlement negotiations with TCM.

We believe it would be time well spent to discuss our July 29 proposal, how we arrived at our positions, and our proposal's similarities and differences as compared with the federal proposal. More importantly, it is imperative that we discuss how we will work together to engage in a productive negotiation with TCM. We know we share a genuine interest in protecting the people and natural resources currently at risk due to contamination at Lake Roosevelt and it would be unfortunate indeed if we cannot find a way to work together. We currently have a conference call scheduled for October 11 to begin this discussion. If you need more time to prepare, we are happy to reschedule.

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<sup>2</sup>The cash out amount will be based on the following: the Human Health RI/FS study costs; plus a cash out premium at 50%, plus the support agency costs; plus public participation costs; and plus interest at 7% annually.

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Due to the passage of time, the 3 Sovereigns propose that the proposed 60-day negotiation period begin only after the 4 Sovereigns agree on an approach to these negotiations. That way, the Parties will have the full 60-day period to endeavor to resolve the complicated issues involved in this matter.

In addition, the 3 Sovereigns request that negotiation sessions, subsequent to the one scheduled for October 20, take place in either Seattle or Spokane. Given that the Site and the majority of participants are located in the Pacific Northwest, it is more practical to hold these negotiations in the state of Washington. At a minimum, the 4 Sovereigns should work cooperatively to schedule subsequent meetings.

To commence our suggested cooperative approach to these negotiations, we suggest that our respective technical representatives begin discussions immediately, in a cooperative government-to-government effort, to develop an agreed cash-out number for the Human Health Risk RI/FS. Our technical people stand ready to engage in this discussion.

We look forward to discussing these matters with you and the other members of the federal family. We are at a critical stage in the negotiation process and our October 11 conference call may well be determinative of the 3 Sovereigns' ongoing commitment to the proposed settlement process.

Sincerely,



Donald R. Michel  
Natural Resources Committee Chair  
Colville Confederated Tribes



Jay J. Manning  
Director, Department of Ecology  
State of Washington



Gerald Nicodemus  
Councilman  
Spokane Tribe of Indians

cc: Chet Thompson, Environmental Protection Agency  
Bill Brighton, Department of Justice  
Michael Bogert, Environmental Protection Agency, Region X  
Doug Horswill, Teck Cominco Metals, Ltd.  
Thomas A. Campbell, Pillsbury Winthrop, Shaw, Pittman  
David W. Godlewski, Teck Cominco American, Inc.